

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

GWENDOLYN D. KOPP, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 MAJESTIC GRILL, INC., )  
 )  
 Employer, )  
 )  
 and )  
 )  
 STATE INSURANCE FUND, )  
 )  
 Surety, )  
 Defendants. )  
 \_\_\_\_\_ )

**IC 2006-503051**

**FINDINGS OF FACTS,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

Filed December 6, 2007

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Idaho Falls, Idaho, on August 2, 2007. Claimant represented herself, appearing *pro se*. Dean Dalling of Idaho Falls represented Defendants. Oral and documentary evidence was presented. No post-hearing depositions were taken. Post-hearing briefs were submitted and this matter came under advisement on October 30, 2007.

**ISSUES**

By agreement of the parties at hearing, the issues to be decided are:

1. Whether Claimant has complied with the filing limitations of Idaho Code § 72-706(1); and
2. Whether the limitations are tolled by Idaho Code § 72-604.

## **CONTENTIONS OF THE PARTIES**

Claimant contends that she should win because she has been honest in the pursuit of her claim and opted to trust the workers' compensation system rather than retain a lawyer. Further, Claimant asserts that she has experienced significant loss due to her industrial injury in the form of pain, suffering, physical impairment, inability to function at her pre-injury status, and related income deficits.

Defendants contend that the claim is barred due to Claimant's failure to request a hearing within one year of making her claim, as required by statute. Defendants assert that there is no basis upon which the limitation period should be tolled.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, claims examiner Nancy Hopper, and employer representative Mark Schmidt, taken at hearing;
2. Defendants' Exhibits 1 through 4; and
3. The Industrial Commission legal file.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

## **FINDINGS OF FACT**

1. Claimant began working for Employer on November 1, 2005, as a cashier and server at Mustard's Grill, which is a hot dog stand located inside of Lowe's Home Improvement Center in Idaho Falls.
2. Mustard's Grill is a dba of Employer. Mark Schmidt is the president of Employer.

3. While at work on January 9, 2006<sup>1</sup>, Claimant was discussing dance lessons with Mr. Schmidt and learned that he had previous instruction on the Octopus, a dance step that Claimant asked Mr. Schmidt to demonstrate.

4. It is undisputed that Mr. Schmidt grabbed Claimant's left hand to demonstrate the dance step, but there is a factual dispute as to exactly how the demonstration progressed.

5. Claimant asserts that she initially held up her hands for Mr. Schmidt to take, but that she thought Mr. Schmidt was not going to follow through with the demonstration, and relaxed her stance. Claimant explains that Mr. Schmidt grabbed her left hand tightly and twisted her into his right side, but he could not remember how the step went after that. Claimant describes the immediate onset of excruciating pain in her left hand and shoulder.

6. Mr. Schmidt testified that Claimant held out her hands and that he proceeded to show her the step, but they stopped dancing after making one turn because they ran out of space. Mr. Schmidt contends that there was no indication by Claimant that she was injured on the day of the dance demonstration, and that Claimant completed her shift without incident.

7. Claimant reported the injury to Mr. Schmidt on January 14, 2006.

8. Mr. Schmidt questioned the validity of the claim, but completed a First Report of Injury and forwarded it to Surety via e-mail on January 16, 2006. Upon follow-up with Surety, he learned that his e-mail transmission was not received by Surety and he re-sent the e-mail in early February of 2006.

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<sup>1</sup> There is conflicting information regarding the date of injury. The date of injury is some time from January 6, 2006, through January 10, 2006, and the determination is not crucial to resolution of the disputed issues. The injury date of January 9, 2006, is adopted for this decision and is consistent with Industrial Commission records.

9. Surety received the First Notice of Injury from Employer in early February 2006, and filed it with the Industrial Commission electronically on February 8, 2006. The Industrial Commission provided confirmation of receipt on February 10, 2006.

10. Surety sent a Notice of Claim Status letter to Claimant on February 22, 2006, advising her that her claim was being investigated and that a decision should be made by March 10, 2006.

11. Surety sent a letter to Claimant on March 29, 2006, advising that the claim was being denied because available information failed to establish a causal relationship between the work incident of January 9, 2006, and Claimant's medical treatment.

12. Claimant initially sought medical treatment for her condition on January 16, 2006, and underwent surgical intervention for her left thumb problems in December of 2006.

13. Claimant filed suit in Small Claims Court against Mr. Schmidt for compensation because the claim had been denied by Surety. The suit was dismissed on March 27, 2007, for lack of jurisdiction since the matter involved a workers' compensation claim.

14. Claimant filed a Complaint with the Industrial Commission on April 19, 2007.

15. Neither Employer nor Surety misled the Claimant or otherwise discouraged Claimant from pursuit of her rights through workers' compensation. Surety informed Claimant both in writing on March 29, 2006, and by phone message of April 12, 2006, of her option to contact the Industrial Commission at (208) 334-6000, which is the correct phone number for the Commission, if she disagreed with its decision to deny the claim.

16. Neither Employer nor Surety paid benefits for the claimed injury.

## DISCUSSION AND FURTHER FINDINGS

Idaho Code § 72-706(1) states:

**LIMITATION ON TIME ON APPLICATION FOR HEARING.** When no compensation paid. When a claim for compensation has been made and no compensation has been paid thereon, the claimant, unless misled to his prejudice by the employer or surety, shall have one (1) year from the date of making claim within which to make and file with the commission an application requesting a hearing and an award under such claim.

Idaho Code § 72-706(1) is subject to the tolling provisions of Idaho Code § 72-604:

**FAILURE TO REPORT TOLLS EMPLOYEE LIMITATIONS.** When the employer has knowledge of an occupational disease, injury, or death and willfully fails or refuses to file the report as required by section 72-602(1), Idaho Code, the notice of change of status required by section 72-806, Idaho Code, the limitations prescribed in section 72-701 and section 72-706, Idaho Code, shall not run against the claim of any person seeking compensation until such report or notice shall have been filed.

Generally, a *pro se* claimant proceeds at his or her own peril, and ignorance of the law does not relieve a *pro se* claimant from complying with the requirement to file with the Commission something that could reasonably be construed as a request for hearing within one year from the date his or her claim for compensation has been made. *Zach v. SIF*, 2003 IIC 0378 (July 25, 2003), *Coe v. Sloan*, 16 Idaho 49 (1909).

17. Claimant failed to file any documentation with the Industrial Commission within one year of making her claim in January of 2006 that could be construed as a request for a hearing.

18. Defendants timely filed a First Report of Injury and timely issued a Notice of Claim Status to Claimant.

19. There is no evidence or assertion that Claimant's delay in filing a Complaint with the Commission was the result of being misled by Defendants.

**CONCLUSIONS OF LAW**

1. Claimant failed to comply with the filing limitations of Idaho Code § 72-706(1) and her claim should be dismissed, with prejudice.

2. Filing limitations are not tolled pursuant to Idaho Code § 72-604.

**RECOMMENDATION**

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED this 29<sup>th</sup> day of November 2007.

INDUSTRIAL COMMISSION

/s/  
Michael E. Powers, Referee

ATTEST:

/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of December a true and correct copy of **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

GWENDOLYN D KOPP  
9741 N 5<sup>TH</sup> WEST  
IDAHO FALLS ID 83401

DEAN DALLING  
P O BOX 50050  
IDAHO FALLS ID 83405

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/s/



\_\_\_\_/s/\_\_\_\_\_  
R. D. Maynard, Commissioner

\_\_\_\_/s/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of December, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

GWENDOLYN D KOPP  
9741 N 5<sup>TH</sup> WEST  
IDAHO FALLS ID 83401

DEAN DALLING  
P O BOX 50050  
IDAHO FALLS ID 83405

\_\_\_\_/s/\_\_\_\_\_

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